STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 120125-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 20th day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On March 21, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and initially accepted it on April 7, 2011. BCBSM later indicated that the Petitioner had not completed the internal grievance process. Consequently, the acceptance was withdrawn. Later, after it was determined that BCBSM's agent, Magellan, had completed the internal grievance process, the Commissioner accepted the request for external review on June 29, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on July 14, 2011.

The contract here is the BCBSM *Comprehensive Health Care Copayment Certificate Series CMM 100-90/10* (the certificate). Because medical issues were involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on July 20, 2011.

II. FACTUAL BACKGROUND

From November 15 through December 24, 2010, the Petitioner received residential (also called inpatient) substance abuse treatment at XXXXX, a substance abuse treatment facility in

XXXXX. BCBSM provided coverage for the period November 15 to November 25, 2010, but denied coverage for the care at XXXXX from November 26 through December 24, 2010, stating it was not medically necessary. The amount charged for the denied care was $27,315.67.

The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM's agent, Magellan, held a managerial-level conference and issued a final adverse determination upholding its denial on February 8, 2011.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's substance abuse care provided from November 26 to December 24, 2010?

IV. ANALYSIS

Petitioner's Argument

The Petitioner argued that two physicians, board-certified in addiction medicine and psychiatry, who have evaluated and treated him both concur that it was medically necessary for him to pursue an extended inpatient substance abuse treatment program given his clinical presentation, co-morbidities, and failed extended outpatient program.

The Petitioner asserts that the conclusion by all three BCBSM medical advisors that treatment could have otherwise been effectively rendered in an outpatient setting was based on incorrect information. The Petitioner believes that his inpatient care at XXXXX was medically necessary and should be covered under the certificate.

BCBSM's Argument

The final adverse determination of February 8, 2011, states:

> This review was conducted by XXXXX, M.D., our physician advisor, who has determined that the following days cannot be approved as medically necessary based upon Blue Cross Blue Shield of Michigan inpatient criteria:
>
> | # Days | From | To |
> |---|---|---|
> | 29 | 11/26/10 | 12/24/10 |
>
> "Medical necessity criteria are not met at the time of admission as there was a history provided that the patient had been in outpatient treatment for 3 years. He could maintain sobriety in that outpatient setting. Criteria are not met after 11/25/10. By that time the patient was compliant with treatment. There was no evidence of any severe alcohol cravings. He had achieved a break in cycle of continued use. At that point the patient could've been safely and effectively treated in an intensive outpatient program with a reasonable chance of success.

> There was a quality of care concern given the lack of documentation of core services for each program day."
>
> * * *
>
> [B]ased on the information provided, coverage for the dates referenced above cannot be approved because it is not medically necessary. Under the terms, conditions and limitations of your Blue Cross Blue Shield of Michigan contract, a service must be medically necessary to be covered. As applied to a request for *inpatient care*, medically necessary means that safe and adequate care can only be given on an *inpatient* basis.

Commissioner's Review

The certificate, in "Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care," contains the following provision (p. 3.23):

> **Inpatient Hospital Services That Are Not Payable**
>
> * * *
>
> - Services that may be medically necessary but can be provided safely in the outpatient or office location

The question of whether it was medically necessary for the Petitioner to have residential or inpatient substance abuse treatment from November 25 to December 24, 2010, was presented to an independent review organization (IRO) for analysis as required by section 11(6) of Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is certified by the American Board of Psychiatry and Neurology with a subspecialty in psychosomatic medicine, is an assistant clinical professor of psychiatry and behavioral sciences at a college of medicine and university medical center, is published in peer reviewed literature, and is in active clinical practice.

The IRO reviewer concluded that residential substance abuse treatment for the dates of service November 15 through December 25, 2010, was medically necessary for the Petitioner's condition. The IRO reviewer's report included the following analysis:

> For dates of service November 15, 2010 – December 25, 2010, the enrollee, although doing well and motivated for change was still quite fragile and was at very high risk for relapse. The fact that he had been depressed and had suicidal thoughts on December 9, 2010 indicate that he would have been at an extremely high likelihood of relapse had he not been in a residential treatment setting. The enrollee had failed an outpatient substance abuse treatment program and was at a very high risk of relapse if discharged before completing the residential treatment program that he attended from November 15, 2010 – December 25, 2010.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Blue Cross and Blue Shield of Michigan for the Residential Substance Abuse Treatment, for dates of service November 15, 2010 – December 25, 2010, be overturned.

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's residential care at XXXXX was medically necessary and a covered benefit under the certificate.

V. ORDER

BCBSM's final adverse determination of February 8, 2011, is hereby reversed. BCBSM is required to provide, within 60 days of this Order, coverage for the Petitioner's care at XXXXX for treatment from November 26 through December 24, 2010. BCBSM shall provide the Commissioner proof of coverage within seven (7) days after coverage is provided.

To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.